Filed 1/26/15 Gilberto P. v. Super. Ct. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GILBERTO P.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES AGENCY et al.,

Real Parties in Interest.

G050937

(Super. Ct. No. DP025099)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Andre Manssourian, Judge. Petition denied.

Frank Ospino, Public Defender, Laura Jose, Assistant Public Defender, James P. Harrington and Dennis M. Nolan, Deputy Public Defenders, for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

Law Office of Harold LaFlamme and Yana Kennedy for the Minor.

* * *

In this petition for extraordinary relief, the petitioner contends the juvenile court erred when it determined reunification services need not be offered to petitioner. We deny the petition.

I

FACTS

The minor, G., is less than a year old, and has six siblings who are dependents of the Orange County Juvenile Court. The minor's parents received Family Unification Services beginning on October 15, 2012 and were still receiving them in 2014, until a few months prior to the birth of the minor.

On June 27, 2009, a child abuse report alleging general neglect of three of the children by the father, Gilberto P., the petitioner, due to domestic violence was substantiated. On April 1, 2010, a child abuse report alleging general neglect of three of the children by the mother, Gloria L., was substantiated. On December 21, 2011, a child abuse report alleging general neglect of five of the children by the mother was substantiated. On September 1, 2012, allegations of general neglect of five of the children by both parents were substantiated. On October 9, 2012, allegations of general neglect of the sixth child D. by both parents were substantiated. Several other child abuse reports made from 2010 to 2012 were determined to be either unfounded, inconclusive or taken for information only.

The father was arrested and cited for domestic abuse, disorderly conduct or obstructing a public officer on six occasions. He was also convicted of misdemeanor domestic violence and driving without a license.

When the minor was born in mid-2014, a hospital hold was placed on the minor by a social worker with Orange County Social Services Agency (SSA) "due to allegations of general neglect." A June 16, 2014 SSA report to the court states: "The family home was dirty and uninhabitable, the mother reported domestic violence between her and the father, and past alcohol abuse by the father. Despite approximately two years of reunification services, the parents have yet to reunify with their children and visitations continue to be monitored. The family has an upcoming court hearing on July 22, 2014, when a recommendation will be made to terminate parental rights for child [D.] as she is currently in an identified adoptive home and for a 180 day continuance to identify adoptive homes for the other five children. SSW Griffin reported that the newborn would be in a 'dangerous situation' if left with the parents. She explained that the parents have 'no concept of how to care for their children' and 'don't seem to grasp how to care [for] a child' as they have received 2 years of services and still cannot demonstrate appropriate parenting techniques."

A detention hearing was conducted before the juvenile court on June 17, 2014. The court ordered G. detained and ordered SSA "to provide services as soon as possible, parents to participate in the services quickly as they can, and the agency is ordered to prepare a case plan pursuant to [Welfare and Institutions Code sections] 358 and 358.1 and submit a written report to court and counsel." (All statutory references are to the Welfare and Institutions Code.)

The parents had monitored visits with the children four times a week. Petitioner arrived late for "at least two visits" and one time he was an hour and a half late. On July 9, 2014, the visitation center issued a no-show notification for both parents. The mother requested to decrease visitations with G. Petitioner complained the visits were

difficult, describing them as "[a lot]." The mother again requested a decrease in visitations with G. on July 31, 2014. Both parents regularly missed visitations with G., and the monitor reported that during one visitation petitioner did not hold or even look at G. for the entire visit. On September 24, 2014, the court decreased the visits to twice a week.

A July 22, 2014 SSA report to the court lists various efforts made by SSA to meet with petitioner to discuss his children. Petitioner did not attend three appointments which were made. The social worker reported she interviewed the parents' therapist, who said she worked with the parents for almost a year. The therapist said the parents made minimal progress and continued to have relational issues. The report notes that petitioner claimed he completed a 52-week domestic violence program over a year earlier, completed a one-year alcohol and substance abuse program and currently attended Alcoholics Anonymous. Petitioner said he missed five or six drug tests due to his work schedule, but that he had been sober for two years. He also claimed to have full-time employment.

SSA's recommendation in the July 22, 2014 report was that the court find no family reunification services be ordered pursuant to section 361.5, subdivision (b)(10). Earlier in 2014, the juvenile court had terminated reunification services for G.'s six siblings.

A July 31, 2014 SSA report states: "According to the professional service providers who have been working closely with the father they report that he has made little progress and at times simply refused to implement skills taught to alleviate the concerns that brought the other children into the custody of the Social Services agency. The father submitted to a [Evidence Code section] 730 evaluation only to conclude that he does not suffer from developmental delays or mental health issues. Further, the father has been unable to make any progress in therapy per the report of his IPP provider. The father also per his own account has admitted that he still struggles with anger issues. Due

to said lack of progress the court found sufficient evidence to show the returning of the siblings to the father's custody would be detrimental to the safety of the children."

Petitioner was referred to an anger management clinic. When he failed to show up for three appointments, he was dropped from the program.

On July 23, 2014, the juvenile court terminated parental rights of the parents with regard to G.'s six siblings. On July 31, 2014, the juvenile court sustained the petition and found G. was a dependent child of the juvenile court. In October 2014, the court adopted SSA's recommendation when it ruled reunification services need not be provided to the parents.

II

DISCUSSION

Petitioner contends substantial evidence does not support application of section 361.5 because he "has addressed the problems that led to the siblings' removal." He also argues the juvenile court "failed to state the burden of proof to be applied to the bypass and failed to make required findings concerning the reasonableness of father's efforts to treat the problems leading to the siblings' removal."

Under section 361.5, subdivision (b), reunification services need not be provided to a parent where the court finds, by clear and convincing evidence, that termination of reunification services or termination of parental rights has been ordered as to one of the child's siblings, and the parent has "not subsequently made a reasonable effort to treat the problems" that led to the termination of services or parental rights. (§ 361.5, subds. (b)(10), (b)(11).)

"'In enacting section 361,5, subdivision (b), the Legislature has recognized that, notwithstanding the crucial role of reunification services when a minor is removed from the home, it may be useless under certain circumstances to provide services. [Citations.] "Section 361.5 reflects the Legislature's desire to provide services to parents only where those services will facilitate the return of children to parental custody. The

exceptions in subdivision (b) to the general mandate of providing reunification services 'demonstrate a legislative determination that in certain situations, attempts to facilitate reunification do not serve and protect the child's interest.' [Citation.]" [Citation.]' [Citations.]" (*R.S. v. Superior Court* (2007) 154 Cal.App.4th 1262, 1269-1270.)

"We affirm an order denying reunification services if the order is supported by substantial evidence. [Citation.] 'In making this determination, we must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence. [Citation.]' [Citation.]" (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839-840.)

"Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.]" (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

This record is replete with documentation of child neglect, alcohol abuse, domestic violence and unsafe and unsanitary conditions. Petitioner was offered significant services, some of which he availed himself and some of which he did not. There is nothing in the record which indicates petitioner's behavior as a parent improved with all the services he received. This record is full of sad examples of neglect. During one visitation between the parents and G.'s siblings, the mother brought a knife to a visit and left it within reach of a three year old. G.'s sibling grabbed the knife and started to run. When neither parent chased the child to retrieve the knife, the monitor had to intervene to remove the knife from the toddler. Another time, instead of bringing toys for the children to play with, the parents brought them electric lights. The monitor reported they had to change the visitation location because the parents permitted the children to run outside onto a main street without going after them. Petitioner admitted he had

difficulty managing the children during visits. Also, the social worker noted neither parent prepared for G. to come to their home in that "they do not have any baby supplies," lamenting, "There is no possible way I would consider placing any of the children with the parents."

Under the circumstances we find in this record, we conclude the juvenile court's order bypassing reuinifcation services under section 361.5, subdivision (b)(1) is supported by substantial evidence. Petitioner is correct that the juvenile court did not use the magic words "clear and convincing evidence" when the order was made, but the court did say: "Court finds pursuant to sec. 361.5 (b)(10) W&I Code, that reunification services need not be provided as to parents." The statute clearly states the findings must be made by clear and convincing evidence, and we infer from this record the court utilized the requisite standard of proof.

III

DISPOSITION

The petition is denied.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.